



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

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In further email correspondence, HSE informed the Complainant that the Board of Trustees during the December 14, 2016 meeting approved a personnel report utilizing employee numbers and the suspension was due to not following Board of School Trustees Policy G02.06. No factual basis or name and date(s) of suspension was released. A copy of the policy reference was supplied, with no other indication which specific section was violated by the suspended teacher.

HSE argues in its response the description of the employee's actions satisfy the APRA by stating the policy and a brief statement regarding the incident. HSE cites several prior Public Access Counselor opinions justifying its position; however, it remains open to this Office's recommendations.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See Indiana Code § 5-14-3-1*. The Hamilton Southeastern School District is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)*. Accordingly, any person has the right to inspect and copy the HSE's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

Pursuant to Indiana Code § 5-14-3-4(b)(8) personnel files are not disclosable **except for**:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

The name was subsequently released. But as HSE correctly states, factual basis is not defined in the APRA and accordingly, HSE has given a general, non-specific response to a request for a factual basis which led to suspension.



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The law is clear civil servants are entitled to a certain expectation of privacy in regard to their personnel file, and rightfully so. Even though they are accountable to the public in a different way than their private sector counterparts, good management and human resources practices dictate public employees should enjoy some confidentiality as it relates to their employment information. This privilege is eroded to an extent, however, when the employee engages in activities or insufficient performance of duties that would lead to discipline. As they are stewards of the public's trust, deficiencies in their duties warrant disclosure, in order that taxpayers are aware of how their resources are being utilized.

Therefore, when evaluating how much information to release pursuant to a public records request, an agency must strike a balance between privacy expectations of the employee and government transparency considerations. This is not easy to accomplish. Furthermore, the sensitivity of student privacy comes into play when the public employee is employed by a School. Say too much and the public may be able to extrapolate student information; say too little and an agency runs the risk of being opaque.

I do not fault HSE for being careful and issuing a vague statement; however, I do believe the response leans toward lacking sufficient detail. HSE has cited prior opinions from this Office, but they were highly fact sensitive. One involved an attorney who was fired for "lack of skill set and judgment". I went on to opine:

The civil servant in question was also employed by the City as an attorney. Attorney's skill set and judgment are critical to their employability. Using sound judgment and possessing a specific set of skills is germane to their job performance.

See Opinion of the Public Access Counselor 15-FC-217.

Given that the firing in that situation was surrounding a court proceeding – a fact known by the requester at the time of the document request – it could reasonably be concluded the attorney lacked the skills to be effective in the courtroom. This factual basis gives sufficient detail without going into esoteric specifics about performance. The reader of the factual basis could deduce enough information to identify the root cause of the employee's shortcomings.

I do not believe that is the case in this situation, "Not implementing instructions for classroom management strategies" could encompass any number of performance deficiencies. Even buttressed by the subsequent release of the Board Trustee Policy, the information does not provide a factual basis for the underlying deviation from an ascertainable standard of performance. As the Complainant notes, based on the provided policy, the employee could have been cited for a list of violations rather than one



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concrete benchmark. A reader of a factual basis should have some tangible indication as to why a public employee is disciplined.

Factual basis contemplates at least a fact. I would argue that a fact equates to a detail specific to an incident or set of incidents. Without the benefit of knowing the circumstances surrounding the incident, it is difficult for me to suggest a recommended factual basis statement. I trust HSE will take these considerations under advisement and craft a factual basis which strikes a balance between employee-student privacy expectations and a reasonably transparent description of what actually took place.

Luke H. Britt

A handwritten signature in black ink, appearing to read "L. H. Britt", written in a cursive style.

Public Access Counselor

Cc: Mr. Séamus Boyce, Esq.